

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform)	WC Docket No. 11-42
And Modernization)	
)	WC Docket No. 03-109
Lifeline and Link Up)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Advancing Broadband Availability)	WC Docket No. 12-23
Through Digital Literacy Training)	

**PETITION FOR DECLARATORY RULING OR, IN THE ALTERNATIVE,
FOR WAIVER OF SECTION 54.410(f) OF THE COMMISSION’S RULES**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, pursuant to Section 1.2¹ and Section 1.3² of the Commission’s rules, respectfully requests that the Commission issue a declaratory ruling that TracFone is in compliance or at least substantial compliance with the annual re-certification requirement set forth at Section 54.410(f) of the Commission’s rules.³ In the event that the Commission concludes that TracFone is not in at least substantial compliance with Section 54.410(f), then it hereby petitions for a one-time waiver of that rule with respect to those TracFone SafeLink Wireless® Lifeline customers whose continuing eligibility for Lifeline-supported service has been re-certified during calendar year 2012, but before June 1, 2012 and with respect to those customers who enrolled in TracFone’s Lifeline program between January 1, 2012 and May 31, 2012 who, but for the aforementioned requirement, would not be required to re-certify their continuing Lifeline eligibility until the one year anniversary of their enrollment.

¹ 47 C.F.R. § 1.2.

² 47 C.F.R. § 1.3.

³ 47 C.F.R. § 54.410(f).

As will be explained herein, TracFone's existing practices for re-certification of all of its Lifeline customers' continuing eligibility are consistent with the intent underlying recently-promulgated Section 54.410 in general and with the annual re-certification requirement contained at Section 54.410(f) in particular. Moreover, the declaratory ruling/waiver requested in this petition will avoid imposition of unnecessary, duplicative, burdensome, and frankly annoying requests to existing Lifeline customers that they again re-certify their eligibility within months -- in some cases, within weeks or even days -- of their prior re-certifications in the case of those customers who have already re-certified their continuing eligibility during 2012. It will also avoid requiring customers enrolled between January 1, 2012 and May 31, 2012 to have to re-certify their continuing eligibility less than one year following their enrollment.

In the Lifeline Reform Order,⁴ the Commission promulgated a series of rules to modernize and reform the low-income programs supported by the federal Universal Service Fund ("USF") and to detect and prevent waste, fraud and abuse of USF resources. Among those important reforms is a requirement that Eligible Telecommunications Carriers ("ETCs") obtain from all of their enrolled Lifeline customers annual certifications that the customers remain eligible to receive Lifeline-supported services. The annual re-certification requirement, codified at Section 54.410(f) of the rules, replaces a prior rule which required ETCs to re-verify their Lifeline customers' continuing eligibility by surveying a statistically-valid random sample of those customers -- usually less than five percent of the ETCs' Lifeline customer bases.

TracFone has long been a vocal proponent of the replacement of the random sample rule with a requirement that all Lifeline customers re-certify their Lifeline eligibility on an annual

⁴ Lifeline and Link Up Reform and Modernization, et al, FCC 12-12, released February 6, 2012 ("Lifeline Reform Order").

basis. Annual re-certification of all customers will ensure that all customers no longer Lifeline-eligible as well as all customers who do not respond to ETC requests for re-certification will have their Lifeline benefits terminated -- not just those selected based on a random sample. Indeed, in a prior submission, TracFone indicated that imposition of a requirement that entire Lifeline customer bases be re-certified annually could result in \$270 million in annual savings to the USF.⁵

In the Lifeline Reform Order, the Commission states that all ETCs must re-certify the eligibility of their Lifeline subscriber base as of June 1, 2012 by the end of 2012 and report their results to the Universal Service Administrative Company ("USAC") by January 31, 2013.⁶ This statement could be interpreted as requiring that ETCs re-certify after June 1, 2012 and before year end 2012 all of their Lifeline customers, including those who the ETCs re-certified during 2012 but prior to June 1. It would also require customers who enrolled in ETCs' Lifeline programs during 2012 but prior to June 1 to have to re-certify to their ETCs their continued Lifeline eligibility less than one year from the date of their enrollment.

In the case of those ETCs who heretofore were only required to survey a random sample of their customers, a requirement that all customers be re-certified between June 1 and year end 2012 seems reasonable. However, some ETCs already were required to re-certify one hundred percent of their Lifeline customers annually and have been doing so. Specifically, those ETCs who, like TracFone, have received forbearance from application of Section 214(e)(1)(A) of the Communications Act and Section 54.201(i) of the Commission's rules (which require that ETCs provide USF-supported service using their own facilities or a combination of their own facilities

⁵ *Id.*, ¶ 134, n. 349.

⁶ *Id.*, at ¶ 130.

and resale of other carriers' services) are subject to a condition requiring that all of their Lifeline customers re-certify annually that they remain head of household and receive Lifeline service only from that one ETC. Importantly, that one hundred percent re-certification condition is in addition to the generally-applicable rule that a random sample of customers re-certify their continuing Lifeline eligibility.

TracFone conducts its annual re-certification process on a rolling basis with re-certification requests based on each enrolled Lifeline customer's anniversary date, *i.e.*, the date that the customer was enrolled in TracFone's Lifeline program. For example, a customer who was enrolled in SafeLink Wireless® on March 1, 2010 would have received requests from TracFone on or about March 1, 2011 and March 1, 2012 to re-certify his/her eligibility pursuant to the conditions imposed by the Commission in the TracFone Forbearance Order.⁷ All customers who do not respond to those re-certification requests are de-enrolled. Once those non-responding customers are de-enrolled, the ETC no longer receives Lifeline support reimbursement from the USF. Already in calendar year 2012, TracFone has sent re-certification requests to 1,004,077 enrolled SafeLink Wireless® customers. Of those, it has de-enrolled 274,330 customers either because the customers no longer are Lifeline-eligible or, far more often, because the customers failed to respond to the request.

If TracFone is required to again contact each of those customers who have already received re-certification requests and responded to those requests during 2012, no doubt, some of those customers will fail to respond and, as a result, will lose their Lifeline service. It is unrealistic, and frankly unreasonable, to require customers to respond to multiple re-certification

⁷ Petition of TracFone Wireless, Inc. for Forbearance From 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order").

requests within several months or, in some cases, within a few weeks or even days of receiving and responding to a prior request with the penalty for not responding being termination of Lifeline-supported service. Having responded to such recent requests, many customers are likely to assume that the second request was sent in error, that their prior request was sufficient, and that they simply do not appreciate again being contacted by their service provider so soon after the prior re-certification contact.

TracFone recognizes and acknowledges that the post-June 1 re-certification requests required by Section 54.410(f) require Lifeline customers to re-certify to specific factors set forth at Section 54.410(d) of the rules. However, TracFone's pre-June 1 annual re-certification requests encompass most, if not all, of those additional requirements. In fact, commencing on or about April 1, 2012, TracFone has been using Lifeline enrollment forms which contain all of the information and customer certifications required by Section 54.410(d) of the Commission's rules. Furthermore, even prior to April 1, 2012, TracFone has required all Lifeline customers to re-certify that they remain head of household, and that they only receive Lifeline service from TracFone. Moreover, all current TracFone Lifeline customers are subject to TracFone's one-per-household requirement -- which was a TracFone Lifeline enrollment requirement long before it became a codified rule as part of the Lifeline Reform Order. In addition, it has long been TracFone policy to require all applicants for its Lifeline service to provide date of birth, address and Social Security number (last 4 digits) information. Therefore, TracFone already has for its Lifeline customers information now required by Section 54.410(d).

In light of these circumstances, TracFone respectfully submits that its re-certification of Lifeline customers during calendar year 2012, but prior to June 1, substantially complies with the letter and with the intent of the annual re-certification requirement now codified at Section

54.410(f). All customers enrolled on or about April 1, 2012 have executed enrollment forms which comply with the requirements set forth at Section 54.410(d). Requiring TracFone to “re-certify” those same customers again during calendar year 2012 would unnecessarily burden and annoy consumers, would force TracFone to de-enroll from its Lifeline program many consumers who already have re-certified their Lifeline eligibility this year, and would not advance any goal or objective identified in the Lifeline Reform Order.

Accordingly, TracFone respectfully requests that the Commission declare that its 2012 re-certification of current Lifeline customers complies with the requirements of the Lifeline Reform Order and the rules promulgated therein, and that customers enrolled by TracFone during 2012 need not re-certify their continuing Lifeline eligibility until the one year anniversary of their enrollment. Alternatively, TracFone requests that the Commission grant a limited one-time waiver of Section 54.410(f) with respect to those TracFone Lifeline customers whose Lifeline eligibility has been re-certified between January 1, 2012 and May 31, 2012 and with respect to those customers enrolled during 2012, but prior to June 1, 2012.⁸

Respectfully submitted,

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May 18, 2012

⁸ TracFone does not request waiver of the requirement that ETCs submit to USAC by January 31, 2013 the required annual certification form.